

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**IN RE: CESSNA 208 SERIES AIRCRAFT
PRODUCTS LIABILITY LITIGATION**

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MDL No: 1721

No: 05-md-1721-KHV

(This Document Relates Only To
O'Brien v. Cessna Aircraft Co., D. Kan. No. 09-2352)

ORDER

Plaintiffs have filed suit against Cessna Aircraft Company and others seeking damages for personal injuries and wrongful death arising from an air disaster involving the Cessna 208 Series ("C208") aircraft in Alliance, Nebraska. The Judicial Panel on Multidistrict Litigation ("MDL Panel") transferred this action to this Court for consolidated pretrial proceedings along with cases arising from six other air disasters involving the C208. See Transfer Order (Doc. #1) filed in O'Brien v. Cessna Aircraft Co., D. Kan. No. 09-2352. In addition, in September of 2009, the MDL Panel proposed to transfer a case arising from an eighth air disaster involving the C208B near Columbus, Ohio. See Friedman v. Castle Aviation, S.D. Ohio No. 2:09-749. On December 7, 2009, the MDL Panel vacated its conditional transfer order in Friedman. In light of the MDL Panel's recent ruling in Friedman and for reasons stated below, the Court finds that the O'Brien case, which appears to be at a similar stage as Friedman, should be remanded. The Court finds, however, that before remand, the parties in O'Brien should participate in court-ordered mediation which is scheduled before Magistrate Judge James P. O'Hara.

On November 4, 2009, this Court overruled plaintiffs' motion for a suggestion of remand. In particular, this Court found that including O'Brien as part of this MDL would serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation.

See Memorandum And Order (Doc. #923) at 2-3. This Court also noted that the MDL Panel recently proposed to transfer Friedman which also was at an early stage in the proceedings and appeared to involve issues which would likely overlap with the issues in O'Brien. See id. In light of the MDL Panel's decision to vacate its conditional transfer order in Friedman, the O'Brien case appears to be ready for remand. In particular, the MDL Panel stated as follows:

When a transferee judge has accomplished essentially all of the primary objectives of centralization under 28 U.S.C. § 1407 and the advantages of transferring a particular tag-along no longer clearly outweigh the disadvantages, then this Panel promotes the interests of efficiency and justice by ending the automatic transfer of such cases. Our review of the record indicates that we have reached such a point in the life of this MDL.

Order Vacating Conditional Transfer Order at 1. One of the remaining objectives of centralization is to facilitate settlement and that goal can be served in O'Brien by having the parties engage in formal mediation along with the parties in the other cases in this MDL. Magistrate Judge James P. O'Hara has agreed to serve as mediator in that regard on January 12, 2010 at 10:00 AM. If settlement discussions are unsuccessful, the Court anticipates issuing a Suggestion Of Remand to the MDL Panel in O'Brien on January 31, 2010.

To help the transferor court and counsel in that court, counsel here are directed to submit a joint proposed order which summarizes the proceedings in this MDL case.

IT IS THEREFORE ORDERED that the parties attend a settlement conference before Magistrate Judge James P. O'Hara on January 12, 2010 at 10:00 AM.

IT IS FURTHER ORDERED that on or before January 19, 2010, counsel shall submit a joint proposed order which summarizes the proceedings in this MDL case.

The Clerk is directed to send a copy of this order to the transferor judge assigned to O'Brien so that the district judge may consider scheduling and appropriate trial settings.

Dated this 9th day of December, 2009 at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Judge